



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: AS, MNDCT, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$4000
- b. An order that the landlord agree to the assignment of the lease
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify.

The tenant testified they served the landlord by mailing, by registered mail on May 17, 2019 to where the landlord resides. The landlord lives in California. She gave evidence that she did not receive the Application for Dispute Resolution until June 1, 2019. The landlord also stated that the tenants have not provided her with any documentary evidence.

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenants are entitled to an order that the landlord agree to the assignment of the lease?
- b. Whether the tenant are entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy agreement provided that the tenancy would commence on December 20, 2018 and end on August 19, 2019. The rent was \$2000 per month payable in advance

on the first day of the month. The tenant(s) initially paid a security deposit of \$2000 at the start of the tenancy. The tenants later applied \$1000 of the security deposit to the rent for January 2019 leaving a balance of \$1000 held by the landlord as the security deposit.

The tenants vacated the rental unit on June 1, 2019.

Many of the terms of the tenancy agreement are contrary to the Residential Tenancy Act and are unenforceable.

The tenants seek a monetary order of \$4000 and an order that the landlord consent to the assignment of the lease. The particulars of the monetary claim are unclear.

The Attorney for the landlord stated the landlord has filed an Application for Dispute Resolution claiming \$25,000. The matter was set for hearing for late September. The landlord's Application for Dispute Resolution was served on the Tenant on June 19, 2019. The landlord sought an order that the landlord's claim be brought forward and heard with the Tenant's claim. The tenant stated he has not had enough time to prepare. Alternatively the landlord sought an order that both matters be heard in 3 to 4 weeks time as there is a risk the tenants will return to China.

The landlord further testified that the tenants failed to serve documentary evidence on the landlord. The tenant stated he served it by e-mail.

Determination:

After carefully considering evidence and the submissions of the parties I determined that it was appropriate to dismiss the tenants' application with liberty to re-apply for the following reasons:

- I determined that it was not appropriate to have the landlord's claim heard today at the same time as the tenants' claim as the tenant has not had sufficient time to prepare for it.
- I determined the tenants failed to follow the Rules of Procedure and serve documentary evidence of the landlord. Rule 3 of the Residential Tenancy Act Rules of Procedure provide that the applicant must serve a complete single package of evidence on the Respondent at least 14 days before the hearing. I accept the evidence of the landlord that while there has been an exchange of e-

mail between the parties this does not amount to the proper service of evidence as required by the Rules of Procedure.

- I determined the Tenant's monetary claim is not sufficiently clear to provide the respondent with notice. The tenants did not file a Monetary Order Worksheet. The claim as set out in the Application for Dispute Resolution has not provided the respondent sufficient notice of the particulars of the claims which the tenants are making and I determined the failure to properly identify the claims amounts to a breach of the principles of natural justice. .
- The tenants mistakenly filed the Application for Dispute Resolution under the Manufactured Home Park Tenancy Act. This matter should have been brought under the Residential Tenancy Act.
- I determined the parties would not be prejudiced by dismissing the tenants claim with leave to re-apply. I have not made a determination of the tenants' claim on the merits. It would give the tenant an opportunity to re-apply and have it set for the same time as the landlord's claim. It would give the landlord an opportunity to talk to the Residential Tenancy Branch Registry to see whether the claims could be heard at a date earlier than the end of September.

Conclusion:

I order the application of the tenants be dismissed with liberty to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: June 25, 2019

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Residential Tenancy Branch